SUPREME COURT OF U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1716

NORBERT A. LAING, an individual, on behalf of himself and all other persons, associations, firms and corporations similarly situated,

Petitioner,

vs.

MINNESOTA VIKINGS FOOTBALL CLUB, INC., John Doe, Richard Roe, et al., A.B.C., Inc., et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent Minnesota Vikings Football Club, Inc. (hereinafter sometimes referred to as the "Vikings") opposes the petition of Norbert A. Laing for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit on the basic ground that there are no special or important reasons for granting the writ, within the meaning of Rule 19 of the Rules of the Supreme Court.

QUESTION PRESENTED

Whether the United States Court of Appeals for the Eighth Circuit (hereinafter referred to as the "Court of Appeals") erred in affirming the District Court's order for summary judgment in favor of the Vikings, holding that with respect to the Vikings' sale of season ticket packages consisting of tickets for both pre-season and regular season home football games, there was no genuine issue as to any material fact and that as a matter of law there was no violation of Section 1 of the Sherman Act or Section 3 of the Clayton Act because (a) there was no tie, no coercion—Laing could purchase regular season game tickets without purchasing pre-season game tickets; and (b) even if there were a tying arrangement, Laing did not demonstrate any anti-competitive effect flowing from the sale of season ticket packages.

STATEMENT OF CASE

The undisputed facts before the District Court may be briefly summarized as follows:

The Vikings is a Minnesota corporation, with its principal place of business in Edina, Minnesota. At all times material herein, it was engaged in the business of professional football. During each of the years in question—1968 through 1971—the Vikings played nine home games—two pre-season games and seven regular season games. During those years, the Vikings sold only one kind of season ticket package, viz., a season ticket for both pre-season and regular season games. During each of the years mentioned, after season tickets had been sold by the Vikings, and prior to the playing of any pre-season home games, tickets for regular season home games were offered for sale on an individual game basis to the extent that they were available. The stadium where the Vikings played their home games had a seating capacity of approximately 47,000 seats. The tickets available on an individual game basis for regular season games ranged from 13,000 tickets in 1968 to from 2,500 to 4,100 tickets in 1971.

In the District Court, the Vikings moved for summary judgment in their favor on the ground, among others, that (1) pre-season game tickets were not tied to regular season game tickets, i.e., there was no tie at all; and (2) even if there were a tying arrangement, there was no evidence before the court showing any anti-competitive effect as a result of the sale of season ticket packages. The District Court granted summary judgment in favor of the Vikings on the first ground, viz., there was no "tie", no compulsion on consumers that pre-season game tickets be purchased in order to obtain regular season tickets; and the Court did not consider the second ground.

In the Court of Appeals, the Vikings urged that the District Court's Order be sustained not only on the ground relied upon by that Court, but also on the second ground urged upon the District Court, but not considered by it. The Vikings contended that it was entitled to urge before the Court of Appeals in support of the District Court's Order any ground that would find support in the record. The Court of Appeals affirmed the order for summary judgment on the ground relied upon by the District Court and on the additional ground that there was nothing in the record to show any anti-competitive effect flowing from the sale of season ticket packages.

LACK OF ADEQUATE GROUNDS FOR CERTIORARI

In his petition for a writ of certiorari, Laing has demonstrated a lack of appreciation of the factors which might properly persuade the Supreme Court, in its sound judicial discretion, to grant the petition.

The main thrust of the petition is that the District Court and the Court of Appeals were in error in holding that there was no genuine issue as to any material fact and in concluding as a matter of law that there was no violation of the federal anti-trust laws.

The decision by each of those two Courts turned on an analysis of the factual record before the District Court and on the application of well established case law to those facts. Even if it were to be assumed *arguendo* that the Court of Appeals was in error, nevertheless this is not a case for certiorari. In determining whether certiorari jurisdiction should be exercised, the Supreme Court is not concerned with the mere correction of errors in a lower court decision, especially when that decision turns solely upon an analysis of the particular facts involved.

Nevertheless, Laing attempts to bring the instant case within the framework of certain grounds specified in Rule 19 of this Court as a basis for certiorari.

1. Claimed Conflict Between Eighth Circuit and Second Circuit.

Laing contends that the Court of Appeals for the Second Circuit in *Coniglio v. Highwood Services, Inc., et al.*, 1974 CCH Trade Cas. ¶ 75, 016 (2d Cir., 1974) has rendered a decision in conflict with the decision of the Court of Appeals for the Eighth Circuit in the instant case.

It is incomprehensible to the Vikings how Laing can claim that the decision in *Coniglio* is in conflict with the decision by the Court of Appeals in the instant case. In both cases, summary judgment in favor of the football club was affirmed.* In both cases, the court of appeals held that the plaintiff had failed to bring out facts showing what the relevant market was and failed, as a matter of law, to demonstrate any anti-competitive effect on that market.

It is true that the two courts did differ on whether there was a fact issue with respect to the question of the existence of a tying arrangement. But that difference is not the kind of conflict contemplated by Rule 19. There is no conflict on the same matter. The determination of whether there was a fact issue on the question of the requisite coercive power to

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* Laing parenthetically refers to "similar cases pending across the country". It so happens that every decided case involving football season tickets has been decided in favor of the football club on a motion for summary judgment. See *Pfeiffer v. New England Patriots Football Club, Inc.*, 1973-1 CCH Trade Cas. ¶ 74,267 (D. Mass., 1972), appeal dismissed, No. 72-1306 (1st Cir., 1972); *Driskill v. Dallas Cowboys Football Club, Inc.*, 1973-1 CCH Trade Cas. ¶ 74,544 (N.D. Texas, 1973); *Grossman Development Co. v. Detroit Lions, Inc.*, 1973-2 CCH Trade Cas. ¶ 74,790 (E.D. Mich., 1973); *Rubin v. Miami Dolphins, Ltd.*, (S.D. Fla., May 22, 1974) (See Appendix A).

constitute an illegal tying arrangement was based upon the factual record in each particular case. And if a court in one case says that a fact question exists, and a court in another case with a different factual record says that there is no fact issue, we do not have the kind of conflict that would warrant the granting of certiorari. That kind of conflict is not a conflict on an important issue, nor is it a conflict that can be effectively resolved by the prompt action of the Supreme Court alone.

2. Claimed Conflict Between Eighth Circuit and Supreme Court.

Laing seems to argue that the decision of the Court of Appeals in the instant case is in conflict with decisions of the Supreme Court of the United States.

In the first place, the basis set forth in Rule 19 of the Rules of this Court as one of the reasons that this Court might grant certiorari is that a decision on a *federal question* is in conflict with decisions of this Court. Nowhere does Laing point to a *federal question* as the subject matter of the claimed conflict. Secondly, there is in fact no conflict between the Court of Appeals and this Court at all. Both the Court of Appeals and this Court have made it clear that summary judgment should not be granted when a fair examination of the factual record discloses a material fact issue. What Laing is complaining of is the application of that principle to the instant case. The Court of Appeals concluded that Laing produced no facts before the District Court which created a fact issue that was relevant either to the question of an illegal tying arrangement or to the question of any anti-competitive effect. Laing may quarrel with this conclusion, but he has not shown that the Court of Appeals departed from any criteria established by

the Supreme Court for determining whether summary judgment will lie in a particular case.

3. Claimed Importance.

Laing finally contends that the instant case is of special public importance and therefore warrants the granting of certiorari.

The Vikings disagree.

The instant case simply involves the application of well settled case law on the subject of tying arrangements under the anti-trust statutes to a particular set of facts. Whether a genuine issue as to any material fact exists depends solely on the state of record before the District Court. No important question of federal law is involved. There is no reason of national importance why the Supreme Court should take jurisdiction by way of certiorari in order to determine whether this particular case was properly decided by the Court of Appeals.

CONCLUSION

In light of all of the foregoing, the Vikings submit that petitioner, Laing, has not made out a case for the granting of his petition for certiorari. Laing has not shown any special or important reason warranting the granting of certiorari.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Minnesota Vikings Football
Club, Inc.

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 74-129-Civ-CA

ELLIS S. RUBIN,

Plaintiff,

v.

MIAMI DOLPHINS, LTD.,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE has come before the Court on defendant's Motion for Summary Judgment. Upon consideration of the record in this cause and the Court being otherwise duly advised, it is ORDERED AND ADJUDGED that the motion is granted. The Court adopts the argument and case law set forth by the defendant in its memorandum in support of the motion for summary judgment.

DONE AND ORDERED at Miami, Florida this 22nd day of May, 1974.

C. CLYDE ATKINS
United States District Judge

cc. Paul & Thompson
Ellis S. Rubin, Esq.